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January 9, 2006

Office of the Comptroller of the Currency
250 E Street SW, Mail Stop 1-5
Washington DC 20219
Via E-mail: regs.comments@occ.treas.gov

RE: Docket No. 05-17

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington DC 20551
Via E-mail: regs.comments@federalreserve.gov

RE: Docket No. OP-1240

Robert E. Feldman
Executive Secretary
Attention: Comments, RIN 3064-AC97
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington DC 20429
Via E-mail: Comments@FDIC.gov

To Whom It May Concern:

The Greater Rochester Community Reinvestment Coalition (GRCRC), urges you to enhance and clarify the proposed changes to the question and answer section of the Community Reinvestment Act. We are pleased that the federal agencies are directing banks to focus on the low and moderate-income families in areas impacted by disasters. However, we are concerned that some of the proposed questions and answers will divert bank financing to middle- and upper-income housing. It is important that CRA is implemented in a manner consistent with its central objective of ending redlining and expanding access to credit for low- and moderate-income families and communities.

GRCRC was convened in 1993 to generate discussion about the lending patterns in Rochester, NY. Since then, the Coalition has released seven analyses of home mortgage, small business and subprime lending data. We have used the analyses to identify strengths and weaknesses in lending patterns and to generate ongoing discussion with the banks in question. The Coalition also submits comments, based on the data, to the appropriate State and Federal regulators who have oversight of the banks.

GRCRC has a membership of over 30 locally based not-for profits and individuals. GRCRC monitors the community reinvestment lending of Bank of America, JPMorgan Chase, Citigroup, Canandaigua National Bank, Citizens, M&T Bank, and HSBC.

Following is a summation of each of the proposed Q&As along with our analysis.

1. Is the revised definition of community development, effective September 1, 2005, applicable to all banks or only to intermediate small banks?

The Proposal:
The proposed guidance states that the revised definition of community development is applicable to all banks.

Our Recommendation:
GRCRC is satisfied with this proposed question and answer; it is clear and to the point.

2. When do activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize designated distressed or underserved middle-income nonmetropolitan geographies or designated disaster areas?

The Proposal and Our Analysis:
The proposed Q&A states that housing for middle- and upper-income families can qualify as community development if it is located in a distressed rural middle-income census tract or designated disaster area and if it provides benefits to low- and moderate-income people by attracting a major employer that also employs low- and moderate-income people. This is a very indirect and uncertain benefit.

The proposed guidance does not provide credit for middle- and upper-income housing in underserved, rural middle-income census tracts unless the housing is mixed-income that also serves low- and moderate-income families. This is not clear on the number or proportion of low-moderate income families that need to be served in order to get credit.

Our Recommendation:
We oppose granting CRA points for exclusively middle- and upper-income housing, even if that housing is in a distressed or designated disaster area. No matter what the area (distressed, disaster or underserved), to receive CRA credit, a housing development should be mixed income, but with a significant, and not small, number of low- and moderate-income households.

3. *What is a 'designated disaster area'?*

The Proposal:
This proposed Q&A defines a "designated disaster area" as a geographical area that is a disaster area designated by federal or state government. It then states that banks will receive credit on CRA exams for community development activities that were commenced in the year succeeding the disaster designation. The proposed Q&A asks if the one year lag period is long enough. It also asks if the one year period should start running with the expiration of the disaster designation or upon the expiration of other time periods such as "periods of assistance."

Our Analysis and Recommendations:
GRCRC supports the one year lag, especially for major disasters. However, the planning and implementation for the community development activity must have genuinely started within the time period of disaster designation, not one day before the expiration of the time period. We suggest that the lender must be able to demonstrate that it began to arrange or undertake the community development activity three months before the expiration of the disaster period. The examiners should not tolerate "gaming" or manipulation of the time periods on exams.

The one year lag period is long enough. Longer time periods could allow manipulation of CRA exams in which banks seek CRA points for large amounts of financing in former disaster areas that have less pressing needs for the financing as time has elapsed from the disaster. Also, the expiration of the official disaster time period is a clear standard.

4. How are revitalization activities in a designated disaster area considered?

The Proposal:
This Q&A states that CRA exams will grant points for financing in designated disaster areas if the financing has a primary purpose of community development by helping to attract and retain residents or businesses or are part of a "bona fide" plan to revitalize the geography. The proposed guidance also states that more weight will be given to the activities that are targeted to low- and moderate-income individuals and neighborhoods. CRA points would also be awarded for community development investments in entities that assist individuals displaced by the disaster.

Our Analysis:
We support this Q&A, particularly the emphasis on low- and moderate-income families and communities. GRCRC also supports awarding CRA points for responding to the credit needs of evacuees and re-settlers. However, we urge regulators to strengthen the emphasis on projects benefiting low- and moderate-income families and communities. The proposed Q&A states that more weight will be awarded to "community development activities that are most responsive to credit needs, including those of low- and moderate-income individuals or neighborhoods." We suggest that regulators change the word "including" to "particularly." One word can make a large difference.

5. What criteria are used to identify distressed or underserved nonmetropolitan middle-income geographies?

The Proposal:
This proposed Q&A defines a rural middle-income census tract as distressed if it is in a county that has high unemployment, high poverty rates, or has experienced significant out-migration. This Q&A would also define a rural, middle-income census tract as underserved if it is thinly populated.

Our Analysis:
We are satisfied with this question and answer.

6. How often will the agencies update the list of designated distressed and underserved middle-income, nonmetropolitan geographies?

The Proposal:
This proposed Q&A states that the list of rural middle-income distressed or underserved census tracts will be updated on an annual basis and list will be posted on the FFIEC web site. This Q&A also proposes to adopt a one year lag period; if a particular census tract loses designation as distressed or underserved, banks can still receive CRA points for community development activities that occur up to one year after the expiration of the designation.

Our Analysis and Recommendation:
GRCRC is concerned that this proposed guidance will create a two-tier system of census tracts where activities will be eligible for CRA credit—one for rural middle-income distressed or underserved census tracts and one for low- and moderate- income census tracts. We urge regulators to use the same system currently in use for low- and moderate-income census tracts, which means there would be no one-year lag period. If there is to be a lag period, we stress that a year lag period is the longest time period that should be allowed. Moreover, we urge regulators to follow similar guidelines as we recommend in Question 3 and the one year lag for activities in designated disaster areas.

7. How are "revitalization or stabilization" activities in middle-income, nonmetropolitan, distressed geographies and in middle-income, nonmetropolitan, underserved geographies evaluated?

The Proposal:
In distressed areas, the agencies will award CRA points for activities that promote community development by attracting and retaining businesses and residents, the same way as in low- or moderate-income areas. In underserved areas, the agencies will award CRA points for financing infrastructure such as hospitals, industrial parks, or even the rehabilitation of schools, provided the infrastructure also serves low- and moderate-income individuals. However, if an underserved area is also designated as distressed, then the activity must meet the criteria for distressed areas, but does not have to also serve low- and moderate- income residents.

Our Analysis and Recommendation:
The proposed guidance emphasizes financing infrastructure for rural underserved middle-income areas since these areas are sparsely populated, making it hard for the public and private sectors to finance infrastructure. This proposed Q&A seems to be reasonable, but GRCRC urges regulators and CRA examiners to quantify as much as possible how many low- and moderate-income families are expected to use the particular infrastructure in question. We are concerned that in areas that are underserved and distressed, low- and moderate-income residents may be neglected more than in areas that are simply underserved. The guidance should explicitly state that, for distressed, underserved or underserved-distressed areas, more CRA points will be awarded for infrastructure that has the most direct benefits to low- and moderate-income individuals and families.

8. What are examples of community development services?

The Proposal:
This question provides concrete examples of community development services such as financial services to low- and moderate-income people through branches and other facilities located in low-moderate income areas (if not considered as part of a bank's retail banking services), technical assistance on financial matters, school savings programs, electronic benefits transfer systems that improve access to financial services by decreasing costs, and remittances that are reasonably priced and connected to a low-cost account.

Our Analysis and Recommendation:
GRCRC supports the parts of the proposal that emphasize low-cost services, as a counterweight to abusive payday lending and other high cost services in poor neighborhoods. However, a bank should not receive CRA points for merely creating a product like remittances or low cost accounts; the bank should only receive CRA points if it demonstrates that a significant number of low- and moderate-income consumers actually use the products.

The other part of the proposed guidance states that providing services through branches count as community development services. Provision of services through branches and other facilities is a vague criterion. We suggest that regulators clarify they will be examining the number and percent of branches in low- and moderate-income communities on the new community development test for mid-size banks (assets between $250 million to $1 billion). Moreover, as this is a guidance for examiners, we suggest listing or giving examples of what "other facilities" would qualify under this criterion.

9. When evaluating a qualified investment, what consideration will be given for prior period investments?

The Proposal:
The proposed Q&A states that a prior period investment could receive more points on a CRA exam than a current period investment if it were more “responsive to area community development needs.”

Our Analysis and Recommendation:
There could be instances of prior period investments being more responsive, but providing credit for prior period investments should not be used to compensate for low levels of current period investments. A bank with a low level of current period investments should not be able to score higher than low satisfactory on the investment test. A high number of responsive prior period investments can make the difference between a high satisfactory or outstanding investment test rating on a CRA exam but it should not elevate the investment rating of a bank with a low level of investments in the current time period.

10. What are examples of qualified investments?

The Proposal:
This proposed Q&A lists examples of community development investments eligible for CRA points. These include investments in CDFIs, SBICs, and RBICs.

Our Analysis and Recommendation:
GRCRC recommends that regulators tighten the definition of state or municipal bonds to specify that investments in bonds qualify for CRA points if the state or municipal bonds finance affordable housing or community development that benefit low- and moderate-income people. The phrase “that benefits low- and moderate-income individuals” should be included in the final Q&A after “other community development.”

11. How often will the asset size thresholds for small banks and intermediate small banks be changed, and how will these adjustments be communicated?

The Proposal:
This Q&A states that the asset levels of small banks will be adjusted annually based on changes to the Consumer Price Index.

Our Analysis:
GRCRC agrees with this proposed guidance.

12. When evaluating a small or intermediate small bank's performance, will examiners consider, at the institutions request, retail and community development loans, qualified investments, or community development services originated or purchased by affiliates?

The Proposal:
This Q&A says that affiliates can be included on small or intermediate small bank CRA exams, but only if specific loans and other activities of the affiliates are not claimed by another small bank subsidiary. The constraints applicable to affiliate activities of large institutions will apply here.

Our Analysis:
GRCRC agrees with this proposed guidance.

13. How will the community development test be applied flexibly for intermediate small banks?

The Proposal:
The proposed Q&A states that an intermediate small bank (with assets between $250 million and $1 billion) will undergo a community development (CD) test as part of its CRA exam. In order to pass the CD test, the intermediate small bank cannot ignore one or more of community development loans, CD investments or CD services, but there is no required threshold for each of these three CD activities. Based on the bank's assessment of community development needs, a intermediate small bank can offer a combination of these three CD activities consistent with its capacity, community needs, and opportunities for engaging in these activities.

Our Analysis and Recommendations:
GRCRC supports the proposal that a mid-size bank cannot ignore any of the three CD activities, but we emphasize the primacy of community needs as opposed to "opportunities" for evaluating the level of CD activities. "Opportunities" is a slippery criterion and may be used to excuse low levels of CD activities in communities without an established infrastructure for community development. If there are no clear opportunities in a community, then intermediate small banks should create them. In communities without a CD infrastructure, banks should be expected to work with the public and non-profit sectors to develop an infrastructure. In addition, a CRA examiner cannot only rely on a bank's assessment of local community development needs. The CRA examiner must collect assessments (whether formal studies or through contacting stakeholders) of community development needs conducted by community organizations and local government agencies. Also, we recommend that "flexibly" be removed from the question in the final guidance.

14. What will examiners consider when evaluating the provision of community development services by an intermediate small bank?

The Proposal:
This proposed Q&A reiterates some material in Q&A 8 (see above) and states how intermediate small banks will be evaluated for offering CD services.

Our Analysis and Recommendation:
GRCRC applauds the regulators for emphasizing the types of services as well as their provision and availability and that they be "low cost." However, we urge regulators to be more explicit about evaluating branching patterns of intermediate small banks. We recommend that the guidance be rephrased to say the "*provision of branches* and the provision and availability of services to low- and moderate-income individuals including through branches and other facilities located in low- and moderate-income areas." Just adding the phrase, "provision of branches" can ensure that CRA examiners scrutinize the number and percent of intermediate small bank branches in low- and moderate-income communities.

15. When evaluating an Intermediate Small Bank's community development record, what will examiners consider when reviewing the responsiveness of community development lending, qualified investments, and community development services to the community development needs of the area?

The Proposal:
This proposed Q&A explains how qualitative factors will be considered on an intermediate small bank's CD test. It states that in "some cases, a smaller loan may have more qualitative benefit to a community than a larger loan," if the loan is particularly responsive to community development needs.

Our Analysis and Recommendation:
GRCRC is concerned with some of the same issues in this proposed Q&A as in Question 13 (see above). Inadequate "opportunities" cannot excuse low levels of community development activities, particularly in areas with substantial community development needs. CD activities that use "special expertise" or "effort" and develop opportunities (where there were few or none before) that are responsive to specific needs should be given extra consideration. Also, as stated before, a CRA examiner must look at more than the assessment by the bank to determine community needs.

It is true that smaller CD loans and investments can be more responsive to needs than larger ones. For example, a CD loan for construction of a low-income housing development is more responsive than a larger CD investment in mortgage backed-securities (MBS), particularly if the MBS has been already traded on the secondary market. But qualitative factors should not excuse low levels of CD lending, investment, and services. We recommend that examiners avoid erring too much on the side of qualitative factors by comparing the quantity of CD lending, investing, and services of banks of similar asset sizes operating in the same community.

Issues that Are Not Included in the Proposed Questions and Answers

1. Implementing New Regulatory Prohibition Against Discriminatory Practices

The federal agencies recently adopted a new provision to the CRA regulations stating that a bank's CRA rating will be adversely affected by evidence of discriminatory or other illegal practices. However, this proposed guidance does not include a Q&A on how the federal agencies will implement this new provision.

There are questions raised by the lending patterns that can be analyzed as a result of the pricing data released in 2004. The 2004 HMDA data reports information on high cost loans for the first time. It is therefore now possible to ascertain whether a lender is originating a higher percentage of high cost loans to a specific racial or ethnic group.

The Federal Reserve's preliminary analysis of the distribution of high cost loans revealed disparities in lending to certain racial and ethnic groups. A recent GRCRC analysis of the 2004 HMDA data for Rochester, NY also found pricing disparities across race and ethnic lines and is described below.

While we recognize that the pricing data does not capture many factors that are included in a pricing decision we believe that these disparities require further investigation. We also appreciate that the Federal Reserve and the Justice Department have requested information about the 2004 HMDA data from a number of lenders. We look forward to the analysis that will stem from this additional data.

In light of these developments, it is imperative that the issue of predatory lending issue be addressed head on.

We applaud the December 20th 2005 request for comments on proposed guidance on residential mortgage products that allow borrowers to defer repayment of principal and sometimes interest. However, we believe that the information requested in the December 20th guidance does not necessarily capture the full extent of predatory practices that pose a potential threat to the financial well being of both borrowers as well as financial institutions.

We recommend that the agencies issue a new proposed Q&A on the subject of predatory lending.

We recognize that this is a highly controversial area. The agencies' attempt to define predatory lending when the regulation was proposed for comment, resulted in strongly opposed recommendations by financial institutions and community groups. However, just because there are differing opinions about whether the elephant in the room is a snake or a tree trunk, we cannot deny that there is an elephant in the room.

While it is regrettable that the recommendations of the community groups in respect o predatory lending were not adopted in the regulations, the Q and A format provides another opportunity to address this issue.

We recommend that a proposed Q and A should state that fair lending reviews would be automatic when there are high concentrations of subprime lending to protected classes.

We also continue to advocate that the agencies must monitor for predatory lending practices that are not apparent on the face of the documents. GRCRC is staffed by the Empire Justice Center, a not for profit law office that also represents victims of predatory loans. Despite the passage of a law that limits the ability of financial institutions to make predatory loans in New York we continue to see egregious practices that are harmful, such as:

- Adjustable Rate Mortgages to borrowers on fixed income;
- Loans where the income, the value of the home and/or the debts are fabricated at the request of the broker and loan originator.

In states without the protection of a law that limits predatory lending, lenders continue to make loans that appear affordable but in fact are not so because of factors such as:

- Inclusion of prepayment penalties especially when coupled with adjustable interest rates;
- Loans that leave the homeowner with substandard residual income

A proposed Q and A on predatory lending must attempt to address these and other concerns.

On January 10th the Empire Justice Center, which convenes and staffs GRCRC, will release a report documenting disparity in origination of high cost loans to African-Americans and Hispanics in the Rochester, NY area.

The report finds that African-Americans and Hispanics received high cost loans substantially more often than whites. Thirteen percent of the total loans made by all financial institutions in 2004 were high cost. In comparison:

- 28 percent or 267 of the 1323 loans made to African-Americans were high cost
- 20 percent or 124 of the 632 loans made to Hispanics were high cost
- 11 percent or 2584 of the 23,055 loans made to whites were high cost

African-American loan recipients received high cost loans from Rochester area financial institutions, on average, two and one-half times more frequently than white loan recipients, while Hispanic loan recipients obtained high cost loans 1.8 times more often than whites.

African-Americans received high cost loans the most often across all institution types. The Rochester data parallels what has been reported by other not for profits and the Federal Reserve.

Following the release of the report, GRCRC will convene a symposium, in late January, of area lenders and not for profits to discuss the implications of our findings in the report. In planning for this symposium we have learned that area lenders and not for profits are seeing credit patterns that give them cause for concern. A combination of declining or at best stable wages and house prices, combined with increased debt burdens and interest rates is raising alarm bells for both lenders and home ownership counseling agencies.

After the symposium we will issue findings based on the collective wisdom of dozens of area lender and not for profits. We hope that this enterprise will flesh out the story that the data tells and provide a tool for other communities to replicate.

In light of our experience with homeowners in default we recommend that the agencies should add ***Post-Purchase Counseling to the List of Community Development Services and Qualified Investments***

The federal agencies have added some items to the examples of community development services and qualified investments. The regulators should add an explicit reference to post-purchase counseling to ensure that borrowers can remain in their homes and do not fall prey to predatory lending.

GRCRC has worked for over 13 years to increase lending, investments and services in Rochester's underserved communities. We hope that our recommendations to the proposed Q&A will be included in the final guidance, so that the Community Reinvestment Act will clearly guide banks and examiners in ensuring that banks serve entire communities, and not just middle- and upper-income families and communities.

Yours truly,

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